

**§ 1254.36 Donated historical materials.**

The public use of donated historical materials is subject to restrictions on their use and availability as stated in writing by the donors or depositors of such materials and other restrictions imposed by statute. (Researchers are encouraged to confer with the appropriate director or reference staff member on any question of copyright.) In addition, use is subject to all conditions specified by the Archivist of the United States for purposes of archival preservation.

[59 FR 29194, June 6, 1994]

**§ 1254.38 Freedom of Information Act requests.**

(a) *Applicability.* This section applies to Freedom of Information Act requests for unclassified and classified archives. This section does not apply to requests for FRC records or donated historical materials.

(b) *Definitions.*

*Potentially confidential commercial information* means records submitted to any agency by a submitter that may contain material exempt from release under 5 U.S.C. 552(b)(4) because disclosure could reasonably be expected to cause a submitter substantial competitive harm.

*Submitter* means any person or entity providing potentially confidential commercial information to an agency. The term *submitter* includes, but is not limited to, corporations, state governments, and foreign governments.

(c) *Requirements.* Requests for access to archives under the FOIA shall reasonably describe the records requested, shall be made in writing to the director of the appropriate NARA depository listed in part 1253 of this chapter or to the Assistant Archivist for the National Archives, and shall clearly indicate that the request is being made under the Act.

(d) *Processing time.* NARA shall inform requesters of the availability of records within 10 workdays after receiving a request, except when precluded from doing so by conditions as described in 5 U.S.C. 552a(6)(B), or by the need to consult with a submitter, as set forth in § 1254.39.

(e) *Denial of access.* Denials under the FOIA of access to archives are made by the appropriate director of a Presidential library or a regional archives or the Assistant Archivist for the National Archives, who, within 10 workdays, shall notify the requester of the reasons for the denial and of the procedures for appeal.

(f) *Appeals.* (1) A requester whose request for access is denied in whole or in part, or who receives a response that no responsive records were found and who considers the latter response as adverse in nature, may appeal that decision or finding within NARA. The appeal shall be in writing and addressed to the Deputy Archivist of the United States (ND), National Archives, Washington, DC 20408.

(2) The Deputy Archivist must receive an appeal no later than 35 calendar days after the date of the NARA letter of denial to be considered timely.

(3) The appeal letter shall include the words "Freedom of Information Act Appeal" on both the letter and the envelope, and the requester shall enclose with the appeal letter a copy of the initial request and the denial.

(4) In the appeal letter the requester shall briefly state the reasons why NARA should release the records, or, if no responsive records were found and the requester considers this to be an adverse determination, why the requester thinks that the search does not meet the requirements of the FOIA.

(5) The Deputy Archivist shall consult with the agency specifying the restriction, when appropriate, and make a determination within 20 workdays after the date of receipt by the Deputy Archivist of the appeal. If an extension is required, the Deputy Archivist shall notify the requester within 20 workdays from receipt of the request. Time extensions shall not exceed 10 workdays in the aggregate: either solely in the initial stage or solely in the appellate stage, or divided between them.

(6) If the determination is adverse in whole or in part, the Deputy Archivist shall notify the requester of the right to judicial review.

(7) Denials and appeals of denials of access to information under the FOIA exemption 552(b)(1), national security

information, are processed in accordance with the provisions of § 1254.40.

[54 FR 32069, Aug. 4, 1989, as amended at 56 FR 2136, Jan. 22, 1991; 57 FR 22431, May 28, 1992]

**§ 1254.39 Requests for commercial information.**

(a) *Notice of receipt of request.* (1) Submitters of potentially confidential commercial information shall be given written notice and an opportunity to object to release when a request is received for information the submitter designated in accordance with the recipient agency's regulations as commercial confidential, and the request is received less than 10 years after submission of the information.

(2) When the request is for information from a single or small number of submitters, the notice shall be sent to the submitter's last known address.

(3) When the request is for information from a large number of submitters, notice shall be provided by publication of a notice in the FEDERAL REGISTER.

(4) The notice shall either describe the potentially commercially confidential information requested (if the notice is published in the FEDERAL REGISTER), or provide copies of the records containing the information.

(5) NARA shall inform the requester that:

(i) Notice of receipt of a request has been provided to the submitter;

(ii) The response to the request may be delayed beyond the limitations specified in 5 U.S.C. 552(a)(6) (A) and (B) to allow for time to provide notice to the submitter, and to consider any response;

(iii) The delay may be considered as a denial of access to records and that the requester may seek judicial review. However, the requester shall be invited to agree to a voluntary extension of time so that NARA may consider any claims of commercial confidentiality provided by the submitter.

(b) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (a)(1) of this section, NARA shall afford a submitter a reasonable period of time within which to provide NARA with a detailed statement of any objections to disclosure. A reasonable

extension of the time limit for response may be granted when appropriate.

(2) The statement shall specify which information is claimed to be of a confidential commercial nature, and shall specify all grounds for withholding any of the information under the exemptions of the FOIA. If exemption (b)(4) of the FOIA is cited, the statement shall explain how the release of the information can be reasonably expected to cause substantial competitive harm to the submitter.

(3) The statement shall contain a certification that the information has not been published or officially released to the public.

(4) The statement provided pursuant to this subsection may itself be subject to disclosure under the FOIA under § 1250.75.

(c) *Notice of intent to disclose.* NARA shall carefully consider any good faith designations of commercial confidentiality made when the information was initially submitted to an agency, and any timely objections submitted in response to the NARA notice of receipt of a request to release. Except as provided for in paragraph (e) of this section, when NARA determines to disclose, whether in response to a request to release or as the result of an appeal of a denial of access, notice shall be sent to the submitter that:

(1) States why the initial designation or the objections were not sustained;

(2) Describes or encloses a copy of the information proposed for disclosure; and

(3) Specifies a date on which it is proposed to release the information unless barred by court order. The requester shall be simultaneously informed of the disclosure date.

(d) *Notice of law suit.* NARA will promptly inform the requester and submitter of any law suit filed by the other concerning possible disclosure.

(e) *Exception to notice requirements.* The notice requirements of this section do not apply when:

(1) NARA determines that the information should not be disclosed in accordance with one or more FOIA exemptions;

(2) The information has been published or officially made available to the public;